

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

3 TEXAS DEMOCRATIC PARTY, DEMOCRATIC ) AU:19-CV-01063-LY  
SENATORIAL CAMPAIGN COMMITTEE, )  
4 DEMOCRATIC CONGRESSIONAL CAMPAIGN )  
COMMITTEE, EMILY GILBY, TERRELL )  
5 BLODGETT, TEXAS YOUNG DEMOCRATS, )  
TEXAS COLLEGE DEMOCRATS, )  
6 )  
Plaintiffs, )  
7 )  
V. ) AUSTIN, TEXAS  
8 )  
RUTH HUGHS, )  
9 )  
Defendant. ) MARCH 17, 2020

11 RACHEL MILLER, TEXAS DEMOCRATIC ) AU:19-CV-01071-LY  
PARTY, DNC SERVICES CORP., DSCC, DCCC, )  
 )  
12 Plaintiffs, )  
 )  
13 V. ) AUSTIN, TEXAS  
 )  
14 RUTH HUGHS, )  
 )  
15 Defendant. ) MARCH 17, 2020

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TRANSCRIPT OF TELEPHONE CONFERENCE  
BEFORE THE HONORABLE LEE YEAKEL  
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24 Proceedings recorded by computerized stenography, transcript  
25 produced by computer.

16:02:49 1 (In chambers)

16:02:49 2 THE COURT: Okay. Only one housekeeping chore is  
16:02:53 3 we're not looking at you, but we do have a court reporter. So  
16:02:57 4 anytime anyone speaks, just state your name and then speak so  
16:03:02 5 we'll have the complete record.

16:03:04 6 So, whoever wants to tell me first, tell me what your  
16:03:07 7 problem is.

16:03:09 8 MR. HAMILTON: All right. Thank you, Your Honor.

16:03:10 9 This is Mr. Hamilton on behalf of the plaintiff in both of  
16:03:13 10 these cases. I have formally appeared in the Gilby case, but  
16:03:22 11 my law firm and Ms. Khanna, who is on the line here today has  
16:03:27 12 entered an appearance on the Miller case. So I'll be  
16:03:30 13 addressing both of them.

16:03:32 14 The concern, Your Honor, is no surprise. The  
16:03:37 15 coronavirus has been sweeping the country and courts around the  
16:03:41 16 nation, including this one, has entered orders with respect to  
16:03:46 17 in-person courtroom appearances. The second wave of those  
16:03:50 18 orders is now happening in different courts -- this is my third  
16:03:56 19 call in three days -- with respect to depositions, because,  
16:04:01 20 obviously, those require courtroom staff -- sorry -- legal  
16:04:06 21 staff, court reporters, witnesses, and lawyers all to  
16:04:11 22 congregate in small conference rooms for hours at a time, which  
16:04:15 23 is contrary, of course, to the advice of all the health  
16:04:21 24 professionals.

16:04:21 25 THE COURT: Yes. But it might be helpful in culling

16:04:24 1 the herd.

16:04:24 2 (Laughter)

16:04:24 3 MR. HAMILTON: That's true, Your Honor, it probably  
16:04:26 4 would. Particularly those of us who are over 60 are  
16:04:29 5 particularly vulnerable.

16:04:31 6 The reason that we're raising is we have a deposition  
16:04:34 7 scheduled tomorrow. It's a 30(b) (6) deposition of the  
16:04:37 8 representative of the Texas Democratic Party. The witness is  
16:04:41 9 Glen Maxey. He is 68 years old, diabetic, and has underlying  
16:04:45 10 health issues that makes him particularly vulnerable. We have  
16:04:51 11 a deposition on Thursday in the *Miller* case of Ms. Miller, who  
16:04:56 12 will have to drive from Fort Worth to Austin for the  
16:04:59 13 deposition. And on Friday of Ms. Gilby. She's local, so  
16:05:03 14 there's no driving involved, but all three of them will involve  
16:05:07 15 in-person depositions.

16:05:09 16 So what we've proposed, this is -- this is not a  
16:05:15 17 difficult problem. In other litigation and arbitration  
16:05:18 18 elsewhere in the court, or elsewhere in the country, what we  
16:05:21 19 have -- we've proposed is to take the depositions  
16:05:24 20 telephonically and/or by video with the witness being in a room  
16:05:31 21 six feet away from a court reporter on video and -- and the  
16:05:36 22 lawyers participating either by video or by telephone.

16:05:42 23 The only -- you know, only concern that we've heard  
16:05:46 24 from the State, who has refused to agree so far and, instead,  
16:05:49 25 proposed to continue -- and I'll let them speak for themselves

16:05:52 1 in a moment. The only concern we've heard is this  
16:05:57 2 technological one. And I submit, Your Honor, at this point in  
16:06:00 3 2020, that's not -- that's not a problem that is material or  
16:06:05 4 significant.

16:06:07 5 I have a college senior who has just had her college  
16:06:12 6 senior spring break or spring semester canceled, and all of the  
16:06:16 7 classes from school are going to be done by video conference  
16:06:19 8 involving a heck of a lot more than three people using  
16:06:24 9 platforms like Zoom that are really easy to use. Our law firm  
16:06:29 10 is using it all over the country, and colleges from coast to  
16:06:30 11 coast are literally using that platform. So I don't think  
16:06:34 12 there's a technology problem here.

16:06:36 13 The other point I would make is -- and the Court may  
16:06:41 14 already be aware of this. Of course, it's not applicable to  
16:06:44 15 Your Honor and the Western District of Texas, but the Supreme  
16:06:51 16 Court of Texas issued an order yesterday regarding a COVID-19  
16:06:57 17 state of disaster. And paragraph 2(b) of that order  
16:07:00 18 specifically directed that, in state court in Texas, that the  
16:07:07 19 courts should allow or require anyone involved in any hearings,  
16:07:10 20 depositions, or any other proceeding of any kind, including but  
16:07:16 21 not limited to a party attorney with a court reporter, to  
16:07:21 22 participate remotely, such as by teleconferencing, video  
16:07:25 23 conferencing, or other means.

16:07:26 24 Your Honor, I think you obviously have the plenary  
16:07:29 25 authority to direct parties to cooperate and to take or defend

16:07:33 1 these depositions remotely, and that's what we're asking for  
16:07:39 2 here.

16:07:39 3 The State has suggested that we simply extend the  
16:07:43 4 discovery cutoff and, you know, delay these depositions.  
16:07:47 5 That's not going to solve the problem. This issue isn't going  
16:07:50 6 to go away in a matter of days or weeks. It's probably at  
16:07:57 7 least months. And this case can't be delayed because of the  
16:08:04 8 press of the election dates. So we need to stay on track. The  
16:08:07 9 depositions need to move forward. There's no reason to delay  
16:08:10 10 them, and it's simply a matter of protecting the health and  
16:08:13 11 safety and lives of the staff, court reporters, lawyers, and  
16:08:18 12 witnesses who are going to be hauled in during the course of  
16:08:24 13 discovery in the matter.

16:08:25 14 So that's what we're simply asking Your Honor, is a  
16:08:28 15 minute order directing the parties cooperate to take these  
16:08:29 16 depositions remotely.

16:08:32 17 THE COURT: All right. Who wants to speak for the  
16:08:34 18 State in both cases?

16:08:36 19 MR. SWEETEN: Your Honor, this is Patrick Sweeten.

16:08:38 20 And so I want to address a few issues. First of all,  
16:08:43 21 we are aware of COVID-19 and the concerns that exist, you know,  
16:08:47 22 with respect to that. And in no way were we insisting on  
16:08:50 23 in-person contact in these next three depositions in the next  
16:08:53 24 few days. That's not accurate. That's a red herring.

16:08:59 25 In fact, yesterday I spoke to counsel from BC face to

16:09:02 1 face, who indicated that he was going to be in Austin and at  
16:09:05 2 the deposition. We then learned last night that, you know,  
16:09:09 3 he's got a health problem and that he's over 65. That's the  
16:09:12 4 first time they've mentioned it. We even made arrangements  
16:09:16 5 yesterday as to where to take him.

16:09:17 6 We're not trying to push forward -- if there are  
16:09:22 7 concerns about his health, we're not trying to push forward and  
16:09:26 8 take the depositions tomorrow. In fact, we have three  
16:09:29 9 depositions that were all set as in-person depositions, and  
16:09:31 10 I've told them in e-mail today that we're willing to move  
16:09:34 11 those.

16:09:34 12 What we did, though, is we took I think a very  
16:09:37 13 reasonable step of saying why don't we pause? I mean, the  
16:09:40 14 reason we're at such a torrid pace is that we have a scheduling  
16:09:48 15 deadline of fact discovery of May 1st in one case and May 15th  
16:09:52 16 in the other. And why don't we just push one of those back  
16:09:55 17 30 days, which would make it June 15th and one of them back 45  
16:10:00 18 days and make it June 15th. We can still -- one of them has a  
16:10:05 19 trial date of July 20th and 21st. We can still make that trial  
16:10:09 20 date.

16:10:09 21 That would allow us to see where this is going and  
16:10:14 22 maybe take these corporate rep depos towards May or June. You  
16:10:18 23 know, that's -- you know, that's three or a four months out,  
16:10:21 24 and things may change. And, you know, if -- if there's a  
16:10:27 25 particular health concern that is coming up, you know, later in

16:10:31 1 the fact discovery period, you know, we could address that, you  
16:10:35 2 know, through technological means.

16:10:37 3 So they're trying to have us shift these three  
16:10:40 4 depositions that we were going to take immediately into video  
16:10:43 5 conference depositions. You know, we're not ready to turn on a  
16:10:47 6 dime on an e-mail that I saw for the first time when I got in  
16:10:51 7 this morning and then turn, you know, three depositions this  
16:10:54 8 week into video conference depositions. And we think a better  
16:10:57 9 way to handle that would just be let's move the -- the fact  
16:11:00 10 discovery dates 30 days.

16:11:03 11 We can still make the trial dates. There's plenty to  
16:11:10 12 do in this case. They've disclosed five experts in the ballot  
16:11:13 13 order case, and that's the case that's already set for trial  
16:11:16 14 that Your Honor allotted them six hours for. So we've taken  
16:11:19 15 one of the expert's depositions there. We're working on our  
16:11:22 16 experts. We've got discovery issues between the parties as far  
16:11:25 17 as getting written discovery exchanged back and forth. There  
16:11:28 18 is plenty to do, and we thought we could -- we could move the  
16:11:32 19 depositions. You know, perhaps as things unfold, in-person  
16:11:36 20 depositions in May, June are going to be workable.

16:11:39 21 But, in the event that they are not, you know, then  
16:11:43 22 we could talk about additional methods of handling it. But no  
16:11:46 23 one here from the State is saying we're going to take an  
16:11:52 24 elderly person's deposition tomorrow in person and we won't  
16:11:55 25 move from that. We told them that. And so that's a red

16:12:00 1 herring. We think the more reasonable step would be simply to  
16:12:03 2 move the fact discovery deadline to allow us to, you know,  
16:12:07 3 react to this crisis.

16:12:09 4 You'll remember, Your Honor, on both of these cases  
16:12:11 5 the same law firms has been pushing and saying we've got to  
16:12:17 6 have this case heard -- you know, we've got to have this case  
16:12:20 7 heard this summer. Well, we already have a compressed trial  
16:12:24 8 schedule as a result of them coming to this court saying it's  
16:12:26 9 got to be done. We've got to get this, you know, tried this  
16:12:31 10 summer.

16:12:32 11 And so there is room to -- to move out 30 to 45 days,  
16:12:37 12 depending on the case. We're asking for 30 on ballot order and  
16:12:41 13 we're asking for 45 on mobile voting, you know, with a uniform  
16:12:45 14 deadline of June 15th. And I think that there would still be  
16:12:48 15 time, certainly, to make the July trial that the Court has  
16:12:50 16 already set, that's already on the Court's schedule, and work  
16:12:54 17 through this problem, you know, in a reasonable way in light of  
16:12:59 18 this pandemic that has, you know, impacted many of my cases as  
16:13:04 19 well.

16:13:04 20 And so we're working through these issues. But I  
16:13:12 21 think the primary step is let's get some room from these  
16:13:14 22 already extremely compressed schedules that we were really  
16:13:16 23 working to make and we were definitely on pace to make. But  
16:13:18 24 this has happened, and now they're trying to assert that we  
16:13:21 25 have to take all of these in a certain way. And we think

16:13:24 1 that -- that the best way to handle that would be to just  
16:13:27 2 extend the fact discovery deadline.

16:13:30 3 THE COURT: All right. Let me make a couple of  
16:13:35 4 observations.

16:13:36 5 We do have the 1071 case set for trial July the 20th.

16:13:48 6 I think there is a need to get both of these cases tried  
16:13:51 7 sometime in that range because -- I'm not suggesting that  
16:13:56 8 you-all overlooked this, but most lawyers overlook the fact  
16:14:04 9 that in all cases, particularly ones that have great statewide  
16:14:07 10 impact and involve significant issues, the opinions don't jump  
16:14:16 11 out off of the bench as soon as I've heard the testimony. It  
16:14:25 12 takes a good long time for us to write a reasoned opinion and  
16:14:33 13 do the research.

16:14:35 14 I face these cases that generally have good lawyers  
16:14:38 15 on both sides, and the good lawyers on both sides overlook how  
16:14:43 16 difficult the cases are. They're quite obvious and they're  
16:14:46 17 quite apparent to one side and quite apparent to the other  
16:14:53 18 side. They're not that apparent to the Court.

16:14:55 19 We are underwater in Austin by the number of cases we  
16:14:59 20 have. We are hugely under-judged. We only have two  
16:15:04 21 United States district judges in Austin. The last time we got  
16:15:07 22 a new position in Austin was 1991, which means right now what  
16:15:13 23 we're working with are the number of judges that the docket was  
16:15:18 24 projected to be in 1991.

16:15:21 25 If you buy into the proposition that the amount of

16:15:26 1 legal activity in an area is a direct factor of how many people  
16:15:30 2 you put in an area, which does give a good ratio, we have twice  
16:15:35 3 as many people in the Austin Division of the Western District  
16:15:39 4 of Texas than we did in 1991, and our dockets have just about  
16:15:45 5 doubled and we're dealing with virtually -- using virtually the  
16:15:51 6 same number of law clerks and judges to resolve them.

16:15:56 7 Yes, we got a new magistrate judge last summer, but  
16:15:59 8 magistrate judges, while although somewhat helpful, are of  
16:16:04 9 marginal utility, particularly here where we have the lion's  
16:16:12 10 share of the constitutionality of statute cases that come down  
16:16:15 11 the pike in Texas.

16:16:17 12 So let me just say that a July 20th trial date in the  
16:16:21 13 1071 case is not pushing it in order to get an opinion out a  
16:16:31 14 reasonable period before the November elections.

16:16:36 15 Now, I understand the argument that we've been doing  
16:16:39 16 it this way a long time and there's nothing magic about  
16:16:42 17 November of 2020. And I am sympathetic to that. There is an  
16:16:51 18 urgency but, to a large extent, it's an artificial urgency that  
16:16:56 19 only pertains to this election. But what I'm telling you is,  
16:17:00 20 if we get past late July to hear either one of these cases,  
16:17:06 21 your chances of getting an opinion are not good just because it  
16:17:14 22 takes a long time to get things out because of the sheer weight  
16:17:17 23 of the docket. And our criminal docket, while although not as  
16:17:21 24 big as in some divisions, is large and is growing, and we have  
16:17:26 25 to give precedence to the criminal cases, which pushes the

16:17:35 1 civil cases back farther.

16:17:37 2 Right now, based on the order that you have seen,  
16:17:43 3 we're not having any jury cases through the end of April and  
16:17:46 4 the grand jury has been recessed through the end of April,  
16:17:53 5 which means when they come back into session, we're likely to  
16:17:58 6 get a big slug of criminal cases, which could not be a good  
16:18:04 7 thing for you-all, even on your July 20th hearing date.

16:18:10 8 So I'm just telling you everything is a problem right  
16:18:13 9 now. The coronavirus is creating that problem. I hope I'm  
16:18:23 10 wrong, but I'm not convinced that we're going to be back to  
16:18:25 11 business as usual on May the 1st. I think this is a situation  
16:18:29 12 where we've started -- the courts have started moving dates  
16:18:36 13 along but I don't think we have seen the end of it. So there  
16:18:40 14 is that.

16:18:41 15 And in the 1063 case we have not yet set that one for  
16:18:49 16 trial, and we've got a motion to dismiss setting in that case  
16:18:58 17 that we'll take up first. If the case survives the motion to  
16:19:03 18 dismiss, I honestly don't know where that case is going to go  
16:19:08 19 for trial, because we are full. And, as I said, what is not  
16:19:15 20 often apparent when you look on the Internet at the dates we  
16:19:19 21 have court set is the fact that I spend more time on the same  
16:19:25 22 matter outside of the courtroom than I spend on that matter  
16:19:30 23 inside the courtroom. And so there has to be time set aside  
16:19:36 24 for that. So everyone needs to understand that.

16:19:40 25 And I would think that lawyers of your skill and

16:19:45 1 experience would be capable of sitting down and understanding  
16:19:53 2 how all of those moving parts work and working out a reasonable  
16:19:57 3 agreement. It appears that you cannot, and I am disappointed  
16:20:07 4 in both sides, because somewhere in the middle is likely to be  
16:20:14 5 a time when these depositions can be taken that does not push  
16:20:18 6 it too close. But let me just say I'm not convinced that any  
16:20:30 7 of these orders get lifted by June the 25th.

16:20:33 8 Now, I have been working with lawyers that have  
16:20:40 9 primarily legal issue bench trials, and we are setting a few  
16:20:43 10 here or there. But with six hours a side on the one that's  
16:20:51 11 set, that is over a day of trial time, and I'm not sure we're  
16:20:57 12 going to have that in June. So those are just things that you  
16:21:06 13 have to think about. In the 1071 case, of course, we have the  
16:21:11 14 motion to dismiss set the 24th, which we'll discuss.

16:21:18 15 So let me just ask you-all -- because I get paid to  
16:21:24 16 make decisions and I'm fine with that; it's what I do, and I  
16:21:31 17 will make a decision on this. I will tell you one of you will  
16:21:35 18 not like it and the other one will, and one of you will think  
16:21:39 19 it is wrong and arbitrary and it could have been handled better  
16:21:45 20 and the other one will agree with it.

16:21:47 21 You're the only ones that can have an agreement that  
16:21:53 22 satisfies both of you, if you understand what compromise is,  
16:22:01 23 and very few people apparently today do, not the least number  
16:22:05 24 of which are in Washington. But you both have to give up  
16:22:09 25 something to get this done.

16:22:10 1 Now, how important is it to get it done on the  
16:22:17 2 schedule it's on versus getting it done in time to have the  
16:22:24 3 trial in June, because if I'm going to do it --  
16:22:31 4 MR. HAMILTON: Your Honor, if I can address --  
16:22:31 5 THE COURT: Just a minute.  
16:22:33 6 -- I'm going to do it one way or the other, and I'll  
16:22:35 7 just tell you what it is. I'm either going to just arbitrarily  
16:22:38 8 set a new date, which I don't think is a good idea, because I  
16:22:43 9 don't think that's going to be made, or I'm going to order it  
16:22:48 10 be done electronically. We're in a brave new world out there.  
16:22:53 11 We're doing more things electronically. Everybody is going to  
16:22:55 12 have to give up something. We're going to be in pain for a  
16:22:59 13 long time in the way businesses operate and the way we do  
16:23:02 14 things. So now you may address that.  
16:23:08 15 MR. HAMILTON: Well, Your Honor -- Mr. Hamilton on  
16:23:10 16 behalf of the plaintiffs in both cases -- I understand and  
16:23:14 17 appreciate the Court's comment about the crisis that is  
16:23:21 18 exacerbating in the courts with the collision of all of these  
16:23:29 19 trial dates and would suggest that that warrants sticking with  
16:23:35 20 the schedule.  
16:23:36 21 We're happy to be flexible in terms of the specific  
16:23:41 22 scheduling of these depositions. I don't see any reason why we  
16:23:44 23 need to. It's not difficult to arrange the logistics of a  
16:23:47 24 video deposition or a telephonic deposition. Counsel can  
16:23:58 25 e-mail --

16:23:57 1 THE COURT: You're wasting everybody's time.  
16:23:58 2 Everybody understands that. I don't want to hear anymore  
16:24:01 3 prose. I want to know if you're going to agree to one way or  
16:24:03 4 the other, or am I just going to order it, you know. You-all  
16:24:08 5 aren't being -- let me just tell you, you-all are not being  
16:24:11 6 reasonable, because you haven't worked this out. So I don't  
16:24:14 7 want to hear why one side is more reasonable than the other  
16:24:17 8 side.

16:24:18 9 MR. SWEETEN: Your Honor, this is Patrick Sweeten  
16:24:20 10 from the State. And I'll just tell the Court that we are happy  
16:24:23 11 to have a discussion with opposing counsel about all these  
16:24:27 12 issues based on what your -- what the Court has laid out and  
16:24:31 13 see if we can come to something workable.

16:24:33 14 We tried that, you know, in a short e-mail span when  
16:24:38 15 this was first raised last night and until they sent the Court a  
16:24:43 16 letter at two o'clock.

16:24:44 17 THE COURT: Stop, Mr. Sweeten, I want to ask you a  
16:24:46 18 question right there.

16:24:48 19 MR. SWEETEN: Yes, sir.

16:24:48 20 THE COURT: Have you-all had either a face-to-face  
16:24:50 21 meeting or a telephone conference about these issues since the  
16:24:55 22 first e-mail went out?

16:24:58 23 MR. SWEETEN: Since the e-mail last night, the  
16:25:00 24 parties have only exchanged e-mails until 2 p.m.

16:25:03 25 THE COURT: All right. Then let me tell you again

16:25:05 1 what I have told lawyers a thousand times: It is a problem of  
16:25:09 2 the modern practice of law that lawyers try to work things out  
16:25:13 3 with e-mails. And when you try work them out with e-mails, it  
16:25:18 4 never works, or only in the rarest of cases, things get  
16:25:24 5 misinterpreted in e-mails. It's the worst thing that ever  
16:25:27 6 happened to the practice of law.

16:25:29 7 My experience in my court has been that at some point  
16:25:35 8 both sides, or at least one side, gets frustrated with the  
16:25:39 9 e-mails, which is what appears happened here, and then you get  
16:25:43 10 the Court involved. Whereas if you had had personal  
16:25:45 11 communication, at least a telephone call, you might have come  
16:25:52 12 closer to getting this solved.

16:25:54 13 And I am very critical of the whole process and the  
16:25:59 14 practice of law today which leads everybody to think that they  
16:26:03 15 can convince somebody by e-mail what ought to be done, because  
16:26:08 16 it's just not so. There has never been an instance in my  
16:26:14 17 court, which I'm aware of or that has come to my attention, that  
16:26:17 18 when things started out with e-mails and I get the lawyers on  
16:26:21 19 the phone or get them in here in front of me and find out they  
16:26:24 20 haven't ever talked about it, that anything the Court has done  
16:26:28 21 has been anything but a waste of time.

16:26:31 22 So now go ahead with what you're saying, because I'm  
16:26:36 23 disappointed that when you got the notice that we could have a  
16:26:41 24 phone call, you-all didn't immediately have your own telephone  
16:26:45 25 conversation. The only role you as lawyers have in this case

16:26:47 1 is to resolve the case. It's not up to the Court to resolve  
16:26:52 2 the case. And you are supposed to make it as expeditious as  
16:26:59 3 you can to get the case resolved.

16:27:01 4 And what you do when you get engaged in banter like  
16:27:04 5 this is waste the Court's time, because I would put you to  
16:27:09 6 trial without any depositions. I do not believe expert  
16:27:16 7 testimony is important in this case. I believe it's a question  
16:27:18 8 of looking at statute and determining the issues that are  
16:27:21 9 presented. I realize both of you disagree. But I'm not likely  
16:27:25 10 to give any experts very much weight. I'll just tell you that  
16:27:30 11 going in. And I'm not likely to give any fact issue witnesses  
16:27:34 12 very much weight.

16:27:35 13 What I'm going to give the weight to is looking at  
16:27:39 14 the statute and determining whether the objections to it  
16:27:41 15 legally are well-taken. So that's what I tell you.

16:27:53 16 MR. SWEETEN: Well, Your Honor, the State hears you  
16:27:55 17 loud and clear, we are certainly willing to discuss this  
16:27:58 18 matter, you know, with opposing counsel. We certainly -- you  
16:28:02 19 know, we were surprised that the Court was contacted, you know,  
16:28:07 20 as quickly as it was. But I think that there's probably, you,  
16:28:11 21 know some room to have additional discussions and try to work  
16:28:16 22 on this issue.

16:28:17 23 I mean, that, you know, may involve -- it's got to  
16:28:21 24 involve some sort of give and take. So I hear the Court and  
16:28:24 25 I'll pledge to do that and talk with opposing counsel on that

16:28:29 1 issue.

16:28:30 2 MR. HAMILTON: And, Your Honor, on behalf of the  
16:28:31 3 plaintiffs, of course we understand and absolutely will take  
16:28:36 4 Mr. Sweeten up on that and have a conference call with him  
16:28:39 5 shortly after this one and do our best to reach an amicable  
16:28:44 6 agreement that accommodates both sides as well as the health  
16:28:47 7 concerns that are raised.

16:28:49 8 THE COURT: All right.

16:28:50 9 MR. HAMILTON: Thank you for your time.

16:28:52 10 THE COURT: All right. Then I'm going to cut this  
16:28:53 11 off and let you do that. But let me say something while I've  
16:28:57 12 got you on the phone, because we've got the motion to dismiss  
16:29:01 13 set on the 24th in *Miller* and a scheduling conference on the  
16:29:07 14 25th in *Gilby*. It is going to be my intention to conduct both  
16:29:12 15 of those by telephone because we are -- we haven't totally shut  
16:29:18 16 the building down, but we are restricting a lot of things  
16:29:25 17 because we don't want to throw too many people in contact with  
16:29:30 18 one another if we can avoid it. Some of the things we can't  
16:29:33 19 avoid.

16:29:34 20 But in part of your discussions you might want to  
16:29:37 21 talk about how you want to handle the fact that those two  
16:29:42 22 hearings will be done by telephone. And if you have exhibits  
16:29:50 23 or things in the -- on the motion to dismiss in the *Miller*  
16:29:55 24 case -- we probably won't have anything on just the scheduling  
16:29:58 25 conference in the *Gilby* case -- you might want to consider

16:30:03 1 getting them to the Court early and what have you. So discuss  
16:30:06 2 the logistics of those two hearings also.

16:30:12 3 MR. HAMILTON: Yes, sir.

16:30:13 4 THE COURT: All right. Thank you-all.

16:30:13 5 MR. SWEETEN: Thank you, Your Honor.

16:30:13 6 (End of transcript)

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1 **UNITED STATES DISTRICT COURT )**

2 **WESTERN DISTRICT OF TEXAS )**

3 I, Arlinda Rodriguez, Official Court Reporter, United  
4 States District Court, Western District of Texas, do certify  
5 that the foregoing is a correct transcript from the record of  
6 proceedings in the above-entitled matter.

7 I certify that the transcript fees and format comply with  
8 those prescribed by the Court and Judicial Conference of the  
9 United States.

10 WITNESS MY OFFICIAL HAND this the 29th day of  
11 September 2020.

12

13 /S/ Arlinda Rodriguez  
14 Arlinda Rodriguez, Texas CSR 7753  
15 Expiration Date: 10/31/2021  
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